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WASHINGTON, D.C.

MM Docket 92-303

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR REFUND OF HEARING FEE

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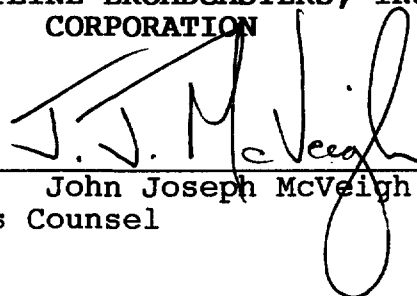
Broadcasting, Inc., File No. BPH-910926MI) to comparative hearing. The HDO specified only the standard comparative issues. See Exhibit B. SBI, pursuant to § 1.221 of the Rules, timely stated its intent to appear at the hearing and to present evidence on the specified issues. See Exhibit C. However, SBI's Appearance referred to a simultaneous filing by all three Kalispell applicants of a Petition for Approval of Settlement Agreement contemplating dismissal of both SBI's and Mr. Seabase's applications and a grant of Cloud Nine's application.

2. Administrative Law Judge John L. Frysiak has approved the Settlement Agreement. See Exhibit D, Memorandum Opinion and Order ("MO&O"), FCC 93M-71 (released February 12, 1993). His Honor has terminated MM Docket 92-303 by dismissing the SBI and Seabase applications and granting Cloud Nine's application -- without a comparative hearing. Accordingly, SBI meets the standard for a refund of the hearing fee set forth in § 1.1111(c)(1) of the Rules. SBI hereby requests a prompt refund of the same.

Respectfully submitted,

SKYLINE BROADCASTERS, INC.
CORPORATION

By



John Joseph McVeigh

Its Counsel

FISHER, WAYLAND, COOPER
& LEADER
1255 Twenty-third Street
Northwest
Suite 800
Washington, D.C. 20037-1125
(202) 775-3544

Date: March 3, 1993

EXHIBIT A

FCC/MELLON

LAW OFFICES

RECEIPT COPY

MAR 02 1992

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Federal Communications Commission
Mass Media Services
P.O. Box 358170
Pittsburgh, Pennsylvania 15251-5170

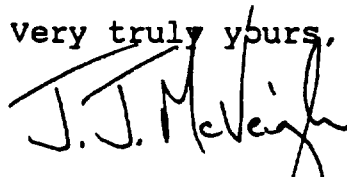
VIA COURIER SERVICE

Re: NEW(FM), Channel 292A,
Kalispell, Montana
Skyline Broadcasters, Inc.
File No. BPH-910925MD
Fee Code MWR

Gentlemen:

Pursuant to the Commission's Public Notice, Report No. NA-155, enclosed please find, in triplicate, a \$6760.00 check payable to the FCC and a completed FCC Form 155 Fee Processing Form to cover the requisite hearing fee for Skyline Broadcasters, Inc., applicant for a construction permit for a new FM broadcast station to serve Kalispell, Montana on Channel 292A. Should there be any questions, please contact this office.

Very truly yours,



John Joseph McVeigh

8239-001
Enclosure



"Good Afternoon"

RADIO - 600
P. O. BOX 169
KALISPELL, MONTANA 59903-0169

20279

FEB 28 1992

93-48/929

PAY
TO THE
ORDER OF

ACC

\$ 6760.00

6760.00

DOLLARS



First Interstate Bank
of Montana, N.A.
Kalispell Office
Phone (406) 752-5001
2 Main Street, P.O. Box 209
Kalispell, Montana 59903-0209

SKYLINE BROADCASTERS, INC.
PRESIDENT - SECRETARY

Embrace Johnson

FOR

⑈020279⑈ ⑈092900480⑈ ⑈0430⑈2⑈

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-303

In re Applications of

SKYLINE File No. BPH-910925MD
BROADCASTERS, INC.
(hereafter "Skyline")

TOM SEABASE File No. BPH-910926MB
(hereafter "Seabase")

CLOUD NINE File No. BPH-910926MI
BROADCASTING, INC.
(hereafter "Cloud Nine")

For Construction Permit
for a New FM Station on Channel 192A
in Kalispell, Montana

HEARING DESIGNATION ORDER

Adopted: December 8, 1992; Released: December 23, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Skyline*. On April 8, 1992, Skyline filed a petition for leave to amend, proposing to reduce its tower height to accommodate the concerns of the Federal Aviation Administration (FAA). We will grant the petition for good cause shown and accept the amendment. Since the amendment was filed after expiration of the time period for filing amendments as of right, any comparative advantage resulting from the amendment will be disallowed. Additionally, we note that the amended tower height values for the proposed 260 foot (79.2 meter) tower do not agree with the FAA's determination. Specifically, the amendment shows a tower height above mean sea level of 1207 meters (3960 feet) while the FAA clearance lists a value of 1210 meters (3970 feet). Using the values specified in the FAA clearance, we find that the other application parameters -- the site elevation and the antenna radiation center heights -- would all be increased by 3 meters. This difference would not cause Skyline's application to violate any Commission rule. Nonetheless, Skyline must submit a clarifying amendment to the Administrative Law Judge within 30 days of the release of this Order to eliminate the noted discrepancy.

3. *Tower Height*. An engineering review of the Seabase and Cloud Nine applications reveals that the applicants propose to side-mount on the existing tower of translator Station K240BT, Kalispell, Montana (BLFT-890207TB). FCC and FAA records show that the translator tower's overall tower height above ground level (OHAGL) and

overall tower height above mean sea level (OHAMS) are 45.1 meters and 1180.5 meters, respectively. However, Seabase and Cloud Nine have specified the OHAGL as 40 meters and OHAMS as 1175 meters. Therefore, the applicants are required either to amend the tower height data specified in their respective applications to comply with FCC and FAA records or, if the heights specified in the application are the actual heights, file with the FAA (FAA Form 7460-1) to correct the tower height discrepancy.

4. Additionally, there is a possibility that the proposed FM antennas and transmission lines will disrupt the translator's directional antenna pattern because the FM antennas will be mounted above K240BT's antenna and the proposed FM transmission lines will be placed near K240BT's antenna. Accordingly, Seabase and Cloud Nine must submit an exhibit, including a statement from the K240BT antenna manufacturer, stating that the proposed antenna will have no adverse effect on the translator's directional antenna pattern.

5. *Residence Address*. Section II, Item 6 of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Seabase has not completed Item 6 correctly. Seabase's application gives a post office box number as the address for itself and for the residence of its sole principal, Tom Seabase. Accordingly, Seabase must submit as amendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge after this order is released.

6. *Late-Filed Amendment*. On April 30, 1992, after the last date for filing amendments as of right, Seabase filed a petition for leave to amend its application. Under Section 1.65 of the Commission's Rules, the petition will be granted, and the amendment accepted. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

7. *Comparative Coverage*. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. *Conclusion*. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. **ACCORDINGLY, IT IS ORDERED**. That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

1. to determine, in light of the evidence, what relief is warranted to the specified parties, which of the applications should be granted, if any.

At the time and in the manner prescribed by the Commission, the parties shall advise the Commission of the presentation of evidence as required by Section 73.3594 of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

10. IT IS FURTHER ORDERED. That Skyline shall submit the information, specified in Paragraph 2, to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED. That Seabase and Cloud Nine shall submit the information, specified in Paragraphs 3 and 4 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED. That Seabase shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

13. IT IS FURTHER ORDERED. That the petitions for leave to amend filed by Skyline (4/8/92) and Seabase (4/30/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein at paragraphs 2 and 6.

14. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

16. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

EXHIBIT C

RECEIPT COPY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

JAN 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re

Applications of

SKYLINE BROADCASTERS, INC.

TOM SEABASE

and

CLOUD NINE BROADCASTING, INC.

For a Construction Permit
for a New FM Station on
Channel 292A at
Kalispell, Montana

MM Docket No. 92-303

File No. BPH-910925MD

File No. BPH-910926MB

File No. BPH-910926MI

To: The Honorable John M. Frysiak,
Administrative Law Judge

NOTICE OF APPEARANCE

Skyline Broadcasters, Inc. ("Skyline"), by its counsel and pursuant to Section 1.221 of the Rules, hereby states its intent to appear on the date fixed for hearing and to present evidence on the issues specified in the Hearing Designation Order, DA 92-1668 (adopted December 8, 1992 and released December 23, 1992). Skyline files this Appearance mindful of the simultaneous joint filing by all three Kalispell applicants of a Petition for Approval of Settlement Agreement which contemplates dismissal of both Skyline's and Mr. Tom Seabase's applications and the grant of the application

of Cloud Nine Broadcasting, Inc. In the event His Honor grants the applicants' Joint Petition, there will be no need for the parties to appear on the date fixed for hearing and to present evidence on the specified issues.

Respectfully submitted,

SKYLINE BROADCASTERS, INC.

By



John Joseph McVeigh
Its Counsel

FISHER, WAYLAND, COOPER
& LEADER
1255 Twenty-third Street
Northwest
Suite 800
Washington, D.C. 20037-1125
(202) 775-3544

Date: January 12, 1993

CERTIFICATE OF SERVICE

I, Renee Gray, a Secretary to the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that I have this Twelfth day of January, 1993, sent copies of the foregoing "Notice of Appearance" by hand delivery to:

The Honorable John M. Frysiak,
Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street Northwest, Room 223
Washington, D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street Northwest, Room 7212
Washington, D.C. 20554

Richard Swift, Esq.
Tierney & Swift, P.C.
1200 Eighteenth Street Northwest,
Suite 210
Washington, D.C. 20036
Counsel to Mt. Tom Seabase

Robert Lewis Thompson, Esq.
Pepper & Corazzini
1776 K Street Northwest,
Suite 200
Washington, D.C. 20006
Counsel to Cloud Nine Broadcasting, Inc.



Renee Gray

EXHIBIT D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-71

In re Applications of)	MM DOCKET NO. 92-303	30867
)		
SKYLINE BROADCASTERS, INC.)	File No. BPH-910925MD	
)		
TOM SEABASE)	File No. BPH-910926MB	
)		
CLOUD NINE BROADCASTING, INC.)	File No. BPH-910926MI	
)		
For Construction Permit for a New)		
FM Station on Channel 292A)		
in Kalispell, Montana)		

MEMORANDUM OPINION AND ORDER

Issued: February 10, 1993 ; Released: February 12, 1993

1. Under consideration are the following:

Joint Request for Approval of Settlement Agreement, filed January 12, 1993, by Cloud Nine Broadcasting, Inc. ("CNB") Tom Seabase ("Seabase") and Skyline Broadcasters, Inc. ("SBI");

Supplemental Declaration, filed January 25, 1993, by Seabase;

First Amendment to Settlement Agreement, filed February 2, 1993, by CNB, Seabase and SBI;

Letter dated February 8, 1993, from SBI; and

Comments in Support of Joint Request for Approval of Settlement Agreement, filed February 8, 1993, by the Mass Media Bureau ("Bureau").

2. The settlement agreement contemplates the dismissal of the applications of Seabase and SBI and the grant of the application of CNB. CNB would pay the legitimate and prudent expenses of Seabase and SBI in the respective amounts of \$25,000 and \$21,000. In addition, paragraph 7 of the settlement agreement, as amended, calls for the parties to forebear from opposing certain applications of other parties during the next seven years.

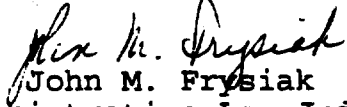
3. Review of the settlement agreement, as amended, and the attachments and supplements reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the

Communications Act of 1934, as amended. Specifically, principals of the applicants have stated that the respective applications were not filed for an improper purpose and that grant of the joint request would conserve Commission resources and expedite the provision of a new FM service to Kalispell, Montana.

4. SBI has set forth an itemization demonstrating that its legitimate and prudent expenses incurred in this proceeding are \$21,000, excluding the hearing fee. Accordingly, it is entitled to reimbursement of \$21,000 from CNB. Seabase has set forth an itemization demonstrating that his legitimate and prudent expenses incurred in this proceeding are \$23,996.45, excluding the hearing fee. Accordingly, he is entitled to reimbursement of no more than \$23,996.45 by CNB.¹ Finally, the Bureau is satisfied that paragraph 7 of the settlement agreement, as amended, does not preclude the parties from bringing to the Commission's attention, in the future, information about whether the other parties lack basic qualifications to be a Commission licensee or are not operating a broadcast station in the public interest. See Nirvana Radio Broadcasting Corporation, 4 FCC Rcd 2778 (Rev. Bd. 1989).

Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement, as amended, filed January 12, 1993 IS GRANTED; the settlement agreement, as amended, IS APPROVED; the applications of Seabase and SBI ARE DISMISSED, with prejudice; the application of CNB IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

¹ Since the settlement agreement does not provide that either SBI or Seabase would return the hearing fee amount to CNB if their hearing fees were refunded by the managing director, the amounts of their approved legitimate and prudent expenses exclude the hearing fee.

CERTIFICATE OF SERVICE

I, Renee Gray, a Secretary to the law firm of Fisher,
Wayland, Cooper and Leader, hereby certify that I have this
Third day of March, 1993, sent copies of the foregoing
"Petition For Refund of Hearing Fee" by hand delivery to:

The Honorable John M. Frysiak,
Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street Northwest, Room 223
Washington, D.C. 20554

Larry Miller, Esq.
Attorney-Advisor, Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street Northwest, Room 7212
Washington, D.C. 20554
Counsel to the Chief, Mass Media Bureau

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Tierney & Swift, P.C.
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Counsel to Mr. Tom Seabase

Robert Lewis Thompson, Esq.
Pepper & Corazzini
1776 K Street Northwest,
Suite 200
Washington, D.C. 20006
Counsel to Cloud Nine Broadcasting, Inc.



Renee Gray